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**CITY OF SHORELINE
HEARING EXAMINER**

City Clerks Ofc.

**RECOMMENDATION TO DIRECTOR OF
PLANNING AND DEVELOPMENT SERVICES**

APPLICANT : City of Shoreline, Department of Public Works

FILE NO.: 1999-000578

PROPOSAL: Modify an existing pedestrian trail by lowering portions of the trail 1 to 4 feet below the existing grade. Other modifications include surfacing the trail with crushed rock, installation of low earthen berms and / or landscape plantings to further screen the trail from adjacent homes, and phases removal of invasive plant species and damaged conifers and plantings of appropriate native species on the adjacent slope

REVIEW PROCESS: The Hearing Examiner conducted a Public Meeting for purposes of providing additional public comment on the proposal prior to a decision being made on the Threshold Determination and grading permit. The Hearing Examiner will provide a report with recommendations to the Director of Planning and Development Services. Another Examiner will conduct any appeals of the Director's decisions as an open record hearing.

BACKGROUND:

The property adjacent to the Richmond Beach Saltwater Park upper bluff was developed prior to the time that King County purchased the property for a park in the 70's. Some properties had cleared and improved out into the site with the permission of the railroad.

The placement of a trail on the upper bluff has been an issue since King County purchased the property. Early site plan proposals placed the trail on lower portions of the park; however they did not have the spectacular views provided by this higher location. King County decided to place the trail on the upper bluff, but reduced the facilities that would generate higher use such as parking, restrooms and picnic shelters. Proposals have been made periodically to help provide relief to the adjacent property owners by lowering the trail. It is felt that this would make it so that people using the trail did not have direct views into the houses which are also oriented to the view as well as not have park users feel they are intruding on the home owners' privacy. This is of particular concern in the center portion of the site where the trail is in close proximity to the private property due to the location of the bluff.

After incorporation when the City of Shoreline and King County were negotiating the transfer of park property, this park, because of this issue, was of major concern to the City. As part of an interlocal agreement, King County agreed to provide funding to upgrade portions of the park including this trail. The Interlocal Agreement between King County and the City of Shoreline states that one of the purposes of the \$170,000 from King County is: "1) improvements to the upper trail at Richmond Beach Park provided; however, that these funds may not be used to compromise or restrict public access to the trail or to the publicly owned portions of the bluff;"

In the request to change the publicized open record hearing to a public meeting two issues were identified:

1. DNS is not appropriate in that substantive conditions could be imposed to mitigate environmental impacts; and
2. Issuance of a grading permit without substantial revisions will violate provisions of the City's clearing and grading and critical areas code.

The City responded positively to this request and the June 9, 1999 meeting was conducted by the Hearing Examiner as a public meeting not an open record public hearing which would have required that any future appeal be a closed record hearing.

In the City's presentation at the public meeting it was emphasized that the objectives were to:

1. Enhance to trail and its amenities (length, seating areas, etc.);
2. Reduce the impact of public use on the adjacent properties;
3. Clarify the park boundary and to resolve private encroachment into the park; and
4. Manage the vegetation to remove invasive species and plant native species and to protect views of both the trail users and the property owners.

The design of the upper bluff trail is divided into 3 zones with the major concerns focused on the center portion that is the narrow part of the site between the edge of the bluff and the private property and where the trail and adjacent private property is in closest proximity.

GENERAL OBSERVATIONS FROM PUBLIC MEETING AND APPLICATION:

Although the initial objection to an open record hearing was that there were substantial problems with the clearing and grading proposal as well as critical environmental issues, there was little additional information provided by the opponents to the trail modification to quantify these problems.

A substantial amount of the testimony in opposition to the proposal dealt with the process of making the decision and the impression that the money is being spent solely to benefit of a few property owners. It is obviously an emotional issue by parties on both sides. Previous efforts,

whether they are public meetings or mediation, to obtain a consensus on an acceptable solution have not been successful.

The City indicated that the encroachments along the park (testimony identified lot 8, 10, 11, 12 and 13) had been resolved. No specific details were provided; however from a review of the site plans, it appears that the proposed landscaping and signage occur at the property line with no intrusions remaining.

There was testimony related to the extent of vandalism and loss of privacy of those living in the adjacent properties. Opponents noted that their conversations with law enforcement didn't show that the reported instances in this location were significantly higher than other neighborhoods. No official data was supplied for comparison. Logs by private owners were provided of instances over time about people from the trail on their private property, looking into their property or on the trail after the park is closed.

Enforcement by the City of the use of the park and the trail after it is officially closed at night was also raised as an issue.

COMMENTS ON DESIGN / ENVIRONMENTAL ASPECTS OF PROPOSAL

The following reflect the range of comments received with specific concerns or proposals related to the trail. Testimony was received on two properties relating to alternative design solutions.

1. Generally, opponents felt that the existing trail is fine and that it should be extended even further into the meadow at the end of the trail.
2. The combination of the extent of lowering the trail and creating the berms will restrict the use of park land which is contrary to the interlocal agreement with King County.
3. It was noted that there are discrepancies about how much excavation will be done (up to 6 feet noted in an engineering report) and how high the berms will be such as 1 to 3 feet or 4 feet or less.
4. It was suggested that any mitigation for the adjacent properties be placed at their property line with fencing or landscaping.
5. It was also noted that rather than use the dip in the trail next to Lot 7 as the model for the rest of the trail, that the dip should be filled in to improve ADA access.
6. The major environmental issue that was identified is the potential impact on the bluff due to the excavation to lower the trail.

7. Concern was expressed that the location of the berms would alter the drainage and put drainage back onto the private properties. The City noted that this would be redesigned to allow these areas to drain.

8. It was suggested that the path should bend and curve to create more privacy on the trail - so you wouldn't see people along long stretches.

9. It was suggested that as construction mitigation the stair should be put back which would allow access to the meadow. (Nothing in the record that was reviewed by the Hearing Examiner indicated where such a stair had been located.)

10. Specific Requests from Lots 8 and 9:

a. Ms. McKinley, Lot 8 has offered to build a retaining wall with a fence on top at her expense to protect her adjacent swimming pool. The earth on the west side of the retaining wall would be excavated and plantings made to create a barrier to the wall/fence at her property.

b. Ms. Swantz, Lot 9, is concerned that the berm design will direct drainage onto her property and that the condition proposed for Lot 7 should also be applied here.

c. Further excavate the trail by an additional 2 feet between lot 7 to lot 9.

FINDINGS AND CONCLUSIONS:

1. This has been an ongoing issue from the time that King County purchased the property for a park. It is likely that the conflict between public use of the park and trail and the adjacent private property will not only continue but also increase as residential density throughout the City and urban area increase.

2. Although there is the perception and statements were made that this is being done for the benefit of a few property owners, there are other considerations from the public perspective:

a. The increased use of the park does increase the intrusion into the use, enjoyment and privacy of the adjacent property owners. Also, these properties were here prior to the property becoming a public park.

b. The public has a responsibility to mitigate the impact of their facilities on adjacent property owners - particularly as the amount of use increases. It is not unusual that mitigation is provided when public streets are widened or a public facility is built or expanded (i.e. Shoreline fire station now under construction).

c. Providing the improvements may result in less long-term public cost due to responses to complaints.

d. Providing the improvements will expand the accessibility to the more usable areas of the upper bluff such as the meadow and provide additional amenity in the form of seating and a

kiosk. Some people feel that the visual separation between the private property and the trail will be positive for enjoyment of the trail.

3. Lowering the trail and creating the berms does not substantially limit the use of the park by the public. The larger park areas at each end of the narrower trail section are left essentially as they currently exist or have extended trails and facilities. Portions of the site that were previously incorporated for private use appears to have been resolved thereby adding to the total public use. The primary public use in the center section is the trail itself and the views to Puget Sound.

4. The applicant has agreed revise the vegetation management plan to require a certified arborist to review and, if necessary, supervise the removal of any tree in the steep slope area and to submit the revised plan to Planning and Development for approval prior to action on the permit.

5. Planning and Development Services has added a condition related to Lot 7 to assure that it will not create a drainage problem either by assuring the surface water can infiltrate into the soil; or revise the grading plan to allow natural drainage, or obtain an agreement from the property owners to fill and grade to bring the berm elevation even with the elevation of the adjacent private property. Infiltration calculations or a revised plan must be submitted prior to permit approval.

6. The extent of excavation and the height of the berms should be the minimum required achieving the visual separation, taking into account the height of the landscaping at the property line.

7. The environmental concerns about excavation and berming appear to have been addressed adequately in the various reports for the application; although a few minor questions need to be answered or clarified regarding the extent of excavation and the amount of materials that will be used on the site or imported such as structural fill or topsoil.

8. The proposed improvements and vegetation management proposals for the steep slope areas of the site adjacent to the trail appear to ensure the long-term stability of that area.

9. The elevation of the trail between Lots 6 to 10 ranges from 218.0 feet to 219.5 feet. To excavate another two feet in front of lots 8 and 9 would not be appropriate.

10. The City of Shoreline conducted an Environmental Impact Statement on the 1998 Parks Plan.

11. The location of the berm adjacent to the property lines at Lots 5, 6, 7 and 9 appear to potentially create a situation where drainage would be directed toward the private property.

12. In reviewing the application with its supporting materials and the information provided at the public meeting some questions were raised which should be reviewed in greater detail by the Director prior to finalizing the recommendation and any conditions:

a. The proposed slope areas created by the excavation and the berms are indicated to be hydroseeded. The landscaping plan indicates that these areas will be native grasses. Is the hydroseeding proposed being done with native grasses and is this the extent of landscaping except for the perimeter landscaping? Is this adequate?

b. The geotechnical study discusses removing some of the excavated materials while the proposal states that material will be used on site. It also notes that topsoil will be imported prior to planting. The extent of removal and importing of materials should be clarified to assure that the total impact is the minimum necessary.

c. The letter dated March 30, 1999 letter from Cosmopolitan Engineering Group reaching conclusions on the geotechnical aspects of the site including its potential for landslides is not signed by geotechnical engineer. This should be reviewed.

d. The design of the perimeter landscaping with the two rows of drought resistance plants will assist in defining the edge of the park; however, it seems to be somewhat inconsistent with the rather natural aspect of the meadows and native grasses. In reviewing the landscape plan this should be reviewed.

RECOMMENDATIONS:

Approve the Clearing and Grading Permit and issue the environmental determination (DNS or MDNS if appropriate) subject to the following conditions or mitigating measures:

1. Subject to the conditions on the permit identified in the Staff Report:

a. Revise vegetation management plan per recommendations in the staff report including:

- Agree to require a certified arborist to review and, if necessary, supervise the removal of any tree in the steep slope area; and
- Submit the revised plan for review by Planning and Development Services prior to action on the permit.

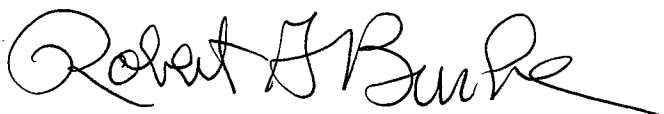
b. Add the following condition relative to Lot 7 and the Hearing Examiner recommends that it also be applicable to at least Lots 5, 6 and 9:

The applicant shall provide documentation that any depression created along the eastern boundary of the project site will not create a drainage problem because surface water can infiltrate into the soil, or revise the grading plan to allow natural drainage, or obtain an agreement from the property owner to fill and grade to bring the berm elevation even with the elevation of the adjacent private property. Infiltration calculations or a revised plan must be submitted prior to permit approval.

2. Applicant shall submit for review the Landscape Plan as noted in the application.

3. Conform to the recommendations of Zipper Zeman Associates regarding the steep slope areas including, but not limited to:
 - a. No use of heavy equipment
 - b. Method of Removal of trees from steep slopes
 - c. Leak detection in irrigation system with automatic shutdown capability.
4. Conform to recommendations of Geotechnical Engineer, including but not limited to:
 - a. qualified geotechnical engineer observe construction as appropriate
5. Proposals for the retaining wall and fence on Lot 8 should be coordinated with the property owner.
6. The relationship of the berm and retaining wall on lot 9 to the proposed grading and to the adjacent properties is not clear when looking at the section. This too should be coordinated with the property owner.
7. The proposal of the owners of the property on lots 8 and 9 for the lowering of the trail an additional two feet should not be approved.
8. Applicant to provide detailed calculations as to the amount of cut and fill, the amount of excavated materials which will be used on-site and / or removed and the amount and type of material that will be brought to the site.
9. Applicant to provide written assurance that all private encroachments have been resolved.
10. In completing the SEPA analysis, the following should be explored for mitigation:
 - a. Install stair to connect to the upper Meadow so recreation use is not lost completely during the excavation and construction of the trail; and
 - b. Other factors identified by staff from the public hearing.

Recommended this 17th day of June, 1999 for Consideration in the Permit Decision and Environmental Determination by the Director of Planning and Development Services.



Robert G. Burke, Hearing Examiner

EXHIBIT LIST:

- Exhibit A** Letter to Anna Kolousek, Planning and Development Services, City of Shoreline, and to Office of the Hearing Examiner from Faith L. Lumsden with attached formal motion to postpone or cancel the June 9, 1999 pre-decision public hearing and convert the evening into a public meeting
Dated June 1, 1999
Received in City Clerk's Office by fax on June 1, 1999
- Exhibit B** Staff Report to the Hearing Examiner
Submitted by Gabe Snedecker, Planning and Development Services, City of Shoreline
Dated June 2, 1999
Received in City Clerk's Office on June 2, 1999
- Exhibit C** Letter to Shoreline City Clerk from Dean G. and Lela L. Jamieson
Dated June 5, 1999
Received by mail on June 8, 1999

Received at Public Meeting:

- Exhibit D** "Encroachment Issue"
Written copy of testimony to Hearing Examiner by Jennifer Gaffney Kleyn
Not dated
- Exhibit E-1** "History of Losses to Mitigation on the Bluff Trail Issue"
Written copy of testimony to Hearing Examiner by Frank Kleyn
Not dated
- Exhibit E-2** "King Co. Master Plan for Bluff Trail Park"
32" x 11" photocopy enlargement submitted by Frank Kleyn
Not dated
- Exhibit F** Four 30" x 18" landscape architectural illustrations submitted by Robert M. Erickson
Not dated
- Exhibit G** Written copy of testimony to Hearing Examiner by Michelle Painchaud
Not dated
- Exhibit H** "Report for Public Hearing Re: Bluff Trail"
Written copy of testimony to Hearing Examiner by Nancy Mohrman

Dated June 9, 1999

- Exhibit I** Written copy of testimony to Hearing Examiner by Carolyn Ballo, plus two attachments: letter to Mayor Connie King from Richard Galster, dated September 3, 1998; and resume of Richard Galster, Consulting Engineering Geologist, not dated
Dated June 9, 1999
- Exhibit J** Written outline of testimony to Hearing Examiner by Michael Pinchaud, plus two attachments: "Appendix A," an excerpt from "The Interlocal Agreement between King County and the City of Shoreline relating to the Ownership, Funding Operation and Maintenance of Parks, Open Space, Recreation Facilities and Program"; and "Appendix B," "Dec. 7th 1998 transcript from The Shoreline County Council, Tape marker approximately 5.59, Councilman Bob Ransom speaking"
Not dated
- Exhibit K** "Public Meeting: Richmond Beach Park Bluff Trail"
Written testimony submitted by Barbara R. Questad
Dated June 9, 1999
- Exhibit L** Letter to the Shoreline City Council from Kathryn Rickert
Dated June 9, 1999
- Exhibit M** "Report for Public Hearing re: Bluff Trail"
Written testimony submitted by Kathy Kaye
Dated "Wednesday, June 10, 1999"
- Exhibit N** "Richmond Beach Saltwater Park Upper Bluff Trail Improvements"
Photocopies of overhead transparencies used by Gabe Snedecker, Planning and Development Services, City of Shoreline, in presentation of staff report to the Hearing Examiner during the public meeting
Not dated

Received after Public Meeting:

- Exhibit O** Letter to Hearing Examiner and City Council from Fran Lilleness
Dated June 10, 1999
Submitted to Planning and Development Services on June 11, 1999

PARTIES OF RECORD: List Available at City Clerk's Office, City of Shoreline